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HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1217th MEETING

Held at Headquarters, New York,
on Monday, 29 March 1993, at 3 p.m.

Chairman: Mr. ANDO

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Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued after the end of the session.

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Uruguay (continued) (CCPR/C/64/Add.4)

1. At the invitation of the Chairman, Mr. Jauregui (Uruguay) took a place at the Committee table.

2. The CHAIRMAN said that the Uruguayan representative would proceed to answer questions held over from sections I, II, III of the list of issues.

3. Mr. JAUREGUI said in response to a question from Mr. Prado Vallejo that the Statutory Limitations Act of 22 December 1986 was just one part of a large body of legislation dealing with the consequences of past human rights abuses. The Act specifically excluded a number of offences committed by members of the armed forces, and provided mechanisms for compensation under civil law for persons whose rights had been violated. The Act did not prevent victims from pursuing criminal complaints against violators, including members of the military. Other legislation in that area included a law granting exiled persons the right to return to Uruguay and to receive compensation for losses suffered as a result of exile, and a law permitting persons deprived of their rights to return to government employment. In addition, the General Assembly had recently passed a new law, Act No. 16,011 which gave citizens the right to file a "writ of amparo". Amparo writs would provide legal recourse to any citizen whose constitutional rights were violated illegally. In all, over 14,000 people were affected by the various laws. All of the above-mentioned laws were in conformity with provisions of the Covenant.

4. In response to a question by Mr. Prado Vallejo about whether the Statutory Limitations Act would not create a sense of impunity among members of the police and military, he said that no such sense of impunity existed. The press had been diligent in bringing individual cases of human rights violations to the attention of the public and increased public scrutiny had led to civil and criminal prosecutions of police and other officials in some important cases. In that connection, he pointed out that Amnesty International had noted an improvement in Uruguay's overall human rights record since the Act had been in force.

5. Regarding the comparison drawn by Mr. Aguilar between Uruguay and El Salvador, he said that the two situations were different. Whereas Uruguay's Statutory Limitations Act was similar to laws adopted elsewhere in Latin America, it was much more exclusive in its approach to the granting of immunity from prosecution than the amnesty law in, for example, Argentina. Moreover, the law permitting exiles to return to Uruguay and to reoccupy the jobs they had left represented a step forward in providing moral restitution to the victims of human rights abuses.

(Mr. Jauregui)

6. In regard to Uruguay's participation in regional human rights institutions, he said that a number of human rights cases involving Uruguay had been brought before the Inter-American Commission on Human Rights, and that Uruguay recognized the authority of both the Commission and the Inter-American Court of Human Rights, where that authority was consistent with the rights of States. In that connection, Uruguay would soon submit its Statutory Limitations Act to the Commission for review.

7. In response to questions regarding paragraph 116 of the periodic report, he said that under article 74 of Uruguay's constitution all men and women born at any place within the territory of the Republic were natural citizens, as were the children of Uruguayan mothers and fathers, regardless of their place of birth.

8. In response to Miss Chanet's concern about guarantees of individual freedoms, and the question put by Mrs. Higgins regarding the compatibility of article 168, paragraph 17 of the Constitution with article 4 of the Covenant, he noted that article 31 of the Uruguayan Constitution stated explicitly that individual security could not be suspended except with the consent of the General Assembly.

9. With respect to Committee members' questions concerning the rights of the disabled, he said that Uruguay was developing new policies for the disabled in accordance with the recommendations of the Inter-American Commission on Human Rights. As noted in paragraphs 26 and 27 of the report, gender discrimination was prohibited; moreover, the Government had passed laws designed to promote equality of opportunity through so-called "reverse discrimination" or preferential hiring to eliminate past inequalities. In addition, claims regarding discrimination could be brought before a judge.

10. In response to Mr. Fodor's question, he said that to date Act No. 16,048 which provided penalties for incitement to discrimination had never been invoked. Mrs. Evatt had asked whether the measures currently being taken would continue into the future. In fact, a technical cooperation project, which would guarantee the continuation of those measures was currently under way. Regarding her inquiry about the nature of the Commission on Human Rights, he said that he had been referring to a section on human rights established within the Ministry of Foreign Affairs; its domain was investigation, follow-up and responding to international consultative bodies, especially those which dealt with human rights issues. In reply to the query of Mr. Dimitrijevic, he replied that ethnic minorities were indeed fully integrated into Uruguayan society, and enjoyed equal possibilities. Discrimination as such did not exist. In reply to Mr. Pocar's inquiry as to whether the executive had the power to intervene in the 34 cases cited, he replied that those were civil proceedings protected by all the guarantees of due process. Out of the 34 cases cited, all but 4 had resulted in compensatory payments.

11. Mr. BRUNO CELLI pointed out that Uruguay's right to take the case before an international tribunal had never been called into question. The American Convention provided that all States that had recognized the jurisdiction of the Inter-American Court were entitled to seek consultative opinions from it. Uruguay had recently submitted to the Inter-American Court a case concerning the competence of an intergovernmental human rights organization to evaluate the compatibility of domestic laws with the American Convention on Human Rights. The Statutory Limitations Act reflected the principle that the public interest took precedence over any private interest by stipulating that the State was responsible for assessing the general political situation, and that the State alone could call for punitive action. Human rights abuses, especially the cases of "enforced disappearance" that had occurred in Uruguay, were crimes of an essentially public nature, of human and universal interest. According to a study prepared by Mr. Gros Espiell and published in June 1989, the issue of human rights in Uruguay had ceased to be the exclusive domain of domestic law. Moreover, under the provisions of the Covenant, a State was obliged to adopt measures to clarify facts and to individualize responsibility. That was an issue not of compensation or restitution but of bringing the truth to light. It would be useful to learn how the reporting State squared the Statutory Limitations Act with Article 2, paragraph 2, and Article 2, paragraph 3 (a), of the Covenant.

12. Mr. POCAR said that he agreed that the executive had no role in civil cases involving the payment of compensation. However, the Statutory Limitations Act referred only to political prisoners. It would be useful to know who decided whether a particular case was covered by the Statutory Limitations Act, the executive or the courts; and if it was the executive, what criteria were used. It had been his understanding that the 34 cases cited were civil cases and that the Statutory Limitations Act therefore did not apply. It was important to know whether or not his understanding was correct.

13. Mr. JAUREGUI, referring to section II (a) of the list of issues, said that there had been no disappearances, extrajudicial executions, or tortures in the form of organized or institutional repression. There had been isolated cases of mistreatment deriving from excessive use of force, and those cases had been duly investigated. They were all minor, and did not involve physical attack. The role of the Ministry of the Interior was simply to assist the justice system in clarifying facts; the principle of the separation of powers prevailed. Act No. 16,170, article 58, established an agency of the police department to act as a consultative and watchdog organization for the branches of the Ministry. Its task was to report on irregularities, to receive complaints, and to prepare summary reports as required by the Ministry. That agency had effectively assisted the Ministry of the Interior in the prevention and elimination of torture.

14. In reply to section II (b), he said that police officers were given no special privileges for the use of firearms. All individuals had the right to bear arms; private individuals were, however, required to provide special permission to do so. Articles 26 and 28 of the Penal Code governed the use of firearms. No complaints of violations by police of the relevant regulations had been lodged.

(Mr. Jauregui)

15. In response to section II (c), he had earlier cited two news articles from the Uruguayan press, which reported that, in one case, four police, in another, the director of a juvenile institution, and in the third, a government official, had been brought to trial, indicating that Uruguay was abiding by article 7 of the Covenant. There were no restrictions of individual freedoms, including the liberty of movement. Persons could be arrested only if caught in flagrante delicto, or if proof of the same was offered by written order of the competent judge. The remedy of habeas corpus was guaranteed by the Constitution. Confessions and testimony obtained under duress were not admissible as proof in courts of law; only testimony given before the competent judge in the presence of a lawyer was valid, in accordance with article 185 of the Penal Code. It was also important to note that Act No. 15,737 had made article 7 of the Covenant into domestic law and that all complaints to administrative and judicial authorities had been duly investigated. He stressed that there was absolute separation of powers and that any measure taken by the police could be investigated by the judiciary. With reference to section II (d), Act No. 14,470 governed punitive incarceration, and established that prisoners were in the charge of the competent judge with regard to legal proceedings; the prison authorities had exclusive competence over prison administration. Government officials were required to respect all international conventions on human rights and if they failed to do so they were duly punished under domestic law. Members of the Supreme Court paid a yearly visit to the prisons. Within the National Directorate of Prisons there also existed the Institute of Criminology, which monitored prisoners during their period of incarceration, and the National Association of Prisoners and Former Prisoners, which dealt with the reassimilation of prisoners into society. He drew attention to Act No. 17,170 creating the post of Counsel for the Police, whose task was to defend police officials accused of committing offences in the course of duty, pointing out that everyone in Uruguay had the right to protection of their human rights. In response to section II (e), he drew the Committee's attention to paragraphs 56 to 77 of the report, which illustrated the extent to which the United Nations Standard Minimum Rules for the Treatment of Prisoners had been adhered to. The laws in force in Uruguay were consistent with those standards. In addition, the National Association of Prisoners and Former Prisoners was represented in all places of detention in Uruguay. There was also a prison bulletin.

16. Turning to section II (f), he drew the Committee's attention to articles 16 and 60 of the Uruguayan Constitution and articles 118-124 of the Code of Penal Procedure, which provided that a statement made by a person under detention must be submitted to a magistrate within 24 hours and the person arraigned within 48 hours of his arrest or be released. Moreover, under article 69 of the Code of Penal Procedure, the sentence imposed must take into account the amount of time a person had already spent in detention. Regarding section II (g), he said that a person could not be held for more than 24 hours without being allowed contact with his lawyer and must be allowed to communicate with his family within 48 hours unless a magistrate ruled otherwise. In connection with section II (h), he said that he would make the text of Ruling No. 7019 of the Supreme Court available to the Committee. In brief, the Ruling provided that the competent judge must ensure a speedy trial and if, after 120 days, no

(Mr. Jauregui)

evidence had been submitted, the competent judge must explain in writing why the required action had not been taken. The President of the Supreme Court of Justice had asked him to inform the Committee that the provisions regarding a speedy trial would be fully complied with, except in those cases where more time was needed for investigation, when an extension of the time-limit would be requested.

Right to a fair trial (article 14 of the Covenant) (section III of the list of issues)

17. The CHAIRMAN read out section III of the list of issues concerning the third periodic report of Uruguay, namely: (a) the legal and administrative provisions governing Tenure, dismissal and disciplining members of the judiciary, and (b) the organization and functioning of the legal profession, particularly the Bar, in Uruguay.

18. Mr. JAUREGUI (Uruguay) noted that Uruguay had the third highest proportion of judges to population in the world, with 15.5 judges per 1,000 inhabitants - a figure which indicated the importance attributed by Uruguay to judges and the judicial function. Its legislation established a complex system for the organization of the judiciary in accordance with the Constitution in which the members of the Supreme Court of Justice were designated by the National Assembly and members of the Court of Appeals were nominated by the Supreme Court and confirmed by the Senate. There were four different procedures for the designation of judges at the various hierarchical levels and they included provisions regulating the dismissal of members of the Supreme Court and the appellate courts. Disciplinary matters were also covered by legislation, and a complex and flexible mechanism had been set in place ensuring the true independence of the judiciary. Members of the Bar belonged to a civil association which had been very active in the promotion of human rights. The statute could be provided to the Committee on request.

19. Miss CHANET, referring to article 7 of the Covenant, said that, although it seemed clear that torture was not practised systematically in Uruguay, some cases of torture and mistreatment of persons under detention had been reported, particularly in police stations and the centres for minors. The absence of any supervisory body for the police might perhaps have something to do with that situation. Referring to article 10 of the Covenant, she asked whether individuals could submit complaints regarding mistreatment and how such complaints were dealt with. Referring to paragraphs 50 and 51 of the third periodic report, she commented that article 71 of the Code of Penal Procedure did not seem compatible with article 9 of the Covenant and asked what was the maximum duration a person could be held in detention before being sentenced. She also asked whether the information provided in paragraphs 54 to 77 of the report referred to conditions which still existed in Uruguay.

20. Mr. FODOR noted that the report contained no information relating to article 7 of the Covenant and asked whether a judicial officer could return to duty while an accusation alleging mistreatment of a person under detention and, in particular, torture, was pending against him. In connection with paragraph 38 of the periodic report, he asked what the reasons were for the delay in ratifying the Conventions relating to slavery. Referring to paragraphs 49 to 53, he said that it would seem more logical to regulate detention itself rather than the exemptions to it. Paragraph 51 seemed to contradict the principle of the presumption of innocence.

21. Mr. WENNERGREN, referring to article 9 of the Covenant, noted that the Uruguayan Constitution established no time-limit within which a judge must decide on the lawfulness of a person's detention, and asked whether that point was covered in the legislation. In connection with article 10 of the Covenant, he asked under what circumstances a prisoner might be placed in solitary confinement and what guarantees existed of the right to freedom of information for detainees held in a maximum security prison. Referring to paragraphs 64 and 65 of the report, he commented that the Classification and Diagnosis Unit described there suggested the possibility of a kind of brainwashing, and asked whether there were provisions regulating the extent of such examinations. In connection with article 7 of the Covenant, he asked what safeguards existed against the subjection of persons under detention to medical or scientific experimentation.

22. Mr. LALLAH associated himself with the questions raised by Mr. Fodor regarding pre-trial detention, and asked whether the decisions taken by a judge with regard to the waiving of pre-trial detention could be appealed to a higher court. He noted that the periodic report did not deal with article 10, 2 (a) of the Covenant, and pointed out that although there was a heading, after paragraph 72, referring to annual prison visits by members of the Supreme Court, no information on such visits had been provided.

23. Mr. SADI noted that Amnesty International had informed the Committee that new reports of ill-treatment by the police in the case of known criminals were still being received and that some previously reported cases of torture remained outstanding. He asked for further information on those subjects.

24. Mrs. EVATT asked whether a defendant could appeal to another judge in cases in which the examining judge refused to grant bail, whether legal aid was available for such an appeal and whether there were any rules about how quickly the appeal could be heard.

25. The representative of Uruguay should indicate how serious the problem of violence against women was in Uruguay, how often firearms were involved in the killing or injury of women, and what measures were being taken to deal with the problem. He should inform the Committee of the number of complaints of ill-treatment or torture involving women prisoners made in the past few years and also indicate whether any specific measures were being taken to protect women in custody from sexual abuse or violation and whether there were separate prisons and facilities for women providing conditions equivalent to those for men.

(Mrs. Evatt)

26. She inquired whether there were special measures to protect young people in custody. She wished to know whether there was a large incidence of suicide in custody and what kind of prisoner was particularly likely to commit suicide.

27. According to article 237 of the Constitution, the members of the Supreme Court of Justice could serve for 10 years and could not be re-elected until after a lapse of five years following the previous term. She wished to know whether that applied to each judicial office in turn or whether it involved a total of tenures in a series of offices.

28. She wished to know who ultimately decided whether or not a judge was to be dismissed for violating the Constitution. Could a judge be dismissed simply on the basis of a political decision of the elected parliament, or could the question of his dismissal be tested by a judicial decision? The representative of Uruguay should describe how legal aid was provided in Uruguay. Finally, she wished to know how many of the 440 judges in Uruguay were women.

29. Mr. MAVROMMATIS said that, while the Committee acknowledged that systematic, officially sanctioned torture was a thing of the past in Uruguay, there were still reports of isolated cases of torture in that country. That was probably due to the ripple effects of the Statutory Limitations Act and also to the fact that there had been a number of allegations of torture that had not been properly investigated, if investigated at all.

30. Noting that, according to paragraphs 39, 40 and 43 of the third periodic report, the remedy of amparo was available only to persons whose constitutional rights had been violated in a "manifestly unlawful manner", he wondered what was the reason for the restriction. With respect to pre-trial detention, referred to in paragraphs 50 and 51 of the report, he considered that the magistrate's decision to keep the defendant in custody should be the exception rather than the norm. Unless he had reasonable grounds to believe the contrary, the magistrate should assume that the defendant would not commit a further offence.

31. He requested further information on the promotion of judges, measures for disciplining judges that did not result in their dismissal, transfers - which could sometimes be punitive - and retirement age. He wished to know whether it was possible, under Uruguayan law, to grant judges, in the absence of malice, immunity from civil or criminal process in the discharge of their duties. The representative of Uruguay should indicate what measures existed for safeguarding the conditions of service of judges for the duration of their service.

32. Mr. FRANCIS wished to know whether the independence of the judiciary could be said to be ensured when judges were appointed by the General Assembly. He understood that, if the General Assembly did not make an appointment within a specified time-limit, Uruguayan law provided that the appointment should be made by the senior judges in the Court of Appeal. Given that manner of appointment, he wondered whether it could be claimed that the judiciary was completely independent in all circumstances.

33. Mr. JAUREGUI, replying to a question raised by Miss Chanet, said that the Uruguayan authorities had taken all measures within the constitutional and legal framework to ensure strict observance of article 7 of the Covenant. Whenever the Government received a complaint of a violation under article 7, it always endeavoured to bring those responsible to justice. With regard to the photographs of detainees chained to their beds, which had been circulated to the press, he noted that, four days after the photographs had appeared, a commission of Uruguayan parliamentarians had publicly declared that the photos had been fabricated and that the detainees had willingly allowed the photographs to be taken. The detainees had not been tortured and had not been subjected to any treatment that violated the provisions of article 7. With respect to article 10 of the Covenant, Uruguay respected the United Nations Standard Minimum Rules for the Treatment of Prisoners. Prisoners had every opportunity to make complaints of inhumane treatment. If persons accused of such treatment were convicted, they were imprisoned.

34. With regard to the concern expressed by Mr. Fodor, he said that a police officer who was accused of ill-treatment was not permitted to return to active service until his trial was over; if convicted, he was obliged to accept the sentence given by the judge.

35. It had been said that Act No. 15,859 seemed to give judges a great deal of discretion. The Act called the "law of prevention without imprisonment", allowed judges to decide whether or not a person accused of an offence was to be placed in preventive detention. When it could be presumed that the defendant would not undertake any further criminal action, judges usually decided to release the defendant. Act No. 15,859 was a wise law, particularly when there was a large number of prisoners and the country did not have the necessary facilities and security forces to keep them all in prison. He would send a copy of the text of the Act to the members of the Committee.

36. Mr. Wennergren had asked about time-limits for amparo and habeas corpus. Article 17 of the 1971 Constitution provided that, in the event of unlawful detention, the interested party or any other person could apply to the competent judge for a writ of habeas corpus to the end that the detaining authority should immediately explain and justify the legal grounds for such detention, the decision of the aforementioned judge being final. No one could be detained for more than 24 hours without being brought before a judge, and the Supreme Court of Justice had urged judges to respect that time-limit. Although guaranteed by the Constitution, the remedy of habeas corpus was not very much used; it was invoked in exceptional cases when all other customary remedies had been exhausted. He would provide the members of the Committee with statistics regarding the number of times habeas corpus had been invoked in Uruguay.

37. A question had been raised about the rules for holding detainees incommunicado. In accordance with article 7 of the Covenant, systematic or officially sanctioned torture was not practised in Uruguay.

(Mr. Jauregui)

38. The recourse of amparo could be used against the police or even a prison officer if he violated the human rights of a detainee. The Government had a strong interest in ensuring that no person who was guilty of human rights violations went unpunished.

The meeting rose at 6.05 p.m.

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Forty-seventh session

SUMMARY RECORD OF THE 1218th MEETING

Held at Headquarters, New York,
on Tuesday, 30 March 1993, at 10 a.m.

Chairman: Mr. ANDO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Uruguay (continued)

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Uruguay (continued) (CCPR/C/64/Add.4)

At the invitation of the Chairman, Mr. Jauregui (Uruguay) took a place at the Committee table.

1. The CHAIRMAN invited Mr. Jauregui to answer questions held over from sections II and III of the list of issues.

2. Mr. JAUREGUI (Uruguay), commenting on the remarks made by Mr. Bruno Celli at the previous meeting, said that there was no law to prevent anybody from demanding just compensation for a crime committed against them. In fact, persons whose human rights had been violated had brought action before Uruguayan courts and had been awarded damages. The correct figure for the number of people who had disappeared was 31 not 600.

3. In reply to Mr. Pocar's question concerning who decided which cases were covered by the Statute of Limitations Act, he said that it was the Executive. The Act stipulated, among other things, that the investigating judge should request that the Executive inform it within 30 days whether the matter under investigation was covered under article 1 of the law. If it was, the case was closed. If no reply was received, or if the reply was not clear, the investigation proceeded.

4. Concerning the questions put by Mr. Lallah and Miss Evatt he noted that there were two types of pre-trial detention: pre-trial detention in custody, which had already been commented on, and pre-trial detention in prison. Whichever type of detention was involved, the investigating judge's decision could always be appealed, either before the same judge or before an appeals court. Moreover, the State provided legal assistance free of charge to all those arrested or accused of crimes. He agreed that the heading "Annual prison visits by members of the Supreme Court of Justice" preceding paragraph 72 of the report should be deleted.

5. In answer to Mr. Sadi he said that the Government was doing its utmost to avoid cases of torture and ensure respect for the full rights of persons undergoing interrogation. Special courses were being organized for people working in the prisons in line with United Nations recommendations. As it was a problem of long-term education to be initiated from the primary level and continued up to the university level, his Government had provided along with the third report, a dossier on the programme being implemented in primary schools to impart the basics of human rights to pupils. That policy had been extended to the university level where a chair on human rights had been established.

6. Regarding violence against women, unfortunately, there had indeed been such cases. In his country, there were very prestigious private and public organizations that defended and supported the rights of women. A special police station staffed entirely by women had been established to receive and

(Mr. Jauregui, Uruguay)

investigate reports of maltreatment and abuses of women. There were also prisons for and run by women. His Government would provide the Committee with a table giving the total prison population figures broken down by gender for the years 1990 and 1991.

7. Whereas judges of the Supreme Court could not serve for more than 10 years and could not be re-elected until five years had elapsed after the end of that tenure, the only limit on the tenure of other judges other than satisfactory performance was that Article 250 of the Constitution set the retirement age for all judges at 70 years. The majority of judges in Uruguay were women, especially in areas that dealt with family matters and minors. For instance in Montevideo, 27 out of the 29 family court judges were women.

8. He could easily allay Mr. Francis' concern with respect to the independence or impartiality of the judicial system. In Uruguay, the Supreme Court judges were proposed by the General Assembly, Appeal Court judges were proposed by the Supreme Court and their appointment required the approval of the Senate. All other judges were directly appointed by the Supreme Court. The mechanism of designating judges by the General Assembly did not threaten the independence of the judiciary. Although Supreme Court judges originally had ties with the General Assembly, such ties in no way had a bearing on their independence or impartiality in the performance of their duties.

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association, right to participation in the conduct of public affairs, and rights of persons belonging to minorities (articles 12, 13, 17, 18, 19, 20, 21, 22, 25 and 27 of the Covenant) (section IV of the list of issues)

9. The CHAIRMAN read out section IV of the list of issues concerning the third periodic report of Uruguay, namely: (a) the extent to which the Roman Catholic Church enjoyed privileged treatment as compared with other churches or religious groups; (b) information on any restrictions which might be placed on the exercise of the right to freedom of expression and information "within the limits of the Constitution and the law"; (c) details on the compatibility of act No. 16,099 of 24 October 1989 with article 19, paragraph 2, of the Covenant, especially in relation to the freedom to seek, receive and impart information; (d) clarification of administrative requirements that needed to be met by heads of news agencies, printers and editors "vis-à-vis the Ministry of Education and Culture"; (e) explanation of the procedure described in paragraph 91 of the report relating to the exercise of the right of reply; (f) information on the enactment of any legislation governing the registration of trade unions and the right to strike following accession to the ILO Conventions mentioned in paragraph 103 of the report; (g) comments on any factors or difficulties hampering the implementation and enjoyment of the rights set out in article 27 of the Covenant; (h) the number of members of minority groups who were members of parliament.

10. Mr. PRADO VALLEJO noting that, under the Press Act, instigation to defamation or slander was a punishable offence said that in his country, the Congress was constantly being criticized for its poor performance. He wondered

(Mr. Prado Vallejo)

whether the representative of Uruguay considered that a crime and whether considering criticism a crime would not be a limitation of freedom of expression.

11. Mr. JAUREGUI (Uruguay) said that no church in Uruguay enjoyed privileged treatment as compared with other churches and that, under the second Constitution, church and State had been separated. Turning to section IV (b) of the list of issues, and the question put by Mr. Prado Vallejo, he noted that article 29 of the Constitution guaranteed total freedom of expression on any subject by any method of dissemination without prior censorship, but also stated that the authors would be held liable for any abuses they should commit. While reiterating the provisions of article 29 and establishing the journalists' rights to professional secrecy, Act No. 16,099 established in article 19 that deliberate dissemination of inaccurate information which seriously disrupted public order or severely damaged the economic interests of the state or harmed its credit abroad and instigation to slandering of the nation, State or its powers were punishable offences. To the extent that such crimes could be defined after the facts and dealt with by an independent judge, it should not be considered that there were any limitations on the freedom of the press.

12. In relation to section IV (c) of the list of issues, Act No. 16,099 was entirely in keeping with article 19, paragraph 2 of the Covenant and even used some of the same wording as the Covenant. In that connection, he referred to paragraphs 87 and 88 of the third periodic report. Article 32 of the Press Act stated that foreign publications could be freely circulated throughout the country and that when offences were committed as a result of such foreign publications, the rules governing the writ of amparo would apply.

13. Regarding section IV (d) of the list of issues, heads of news agencies and printers and editors of publications were required to file, prior to the start of publication, a sworn statement giving the name and address of the publication in question, of the owner and of the printing press. He was providing a copy of the requisite form to the Committee. That purely administrative requirement in no way affected the operation of the publication, but did provide a safeguard for any individual who might wish to sue the publication for libel.

14. With regard to section IV (e), the right of reply (paras. 90-92 of the report) was a very smooth and rapid procedure: the competent judge must call a hearing within 24 hours of receiving a written application for the right to reply publicly to published information injurious to the applicant. If the representative of the publication or the media did not appear, the judge must order immediate publication of the reply; if the applicant did not appear, he would lose his right ever to exercise a similar right of reply; if both attended the hearing, the judge would normally make an immediate ruling, although he could take up to three days if more time or more evidence were required. The judge could either grant the request in which case the reply would be published as indicated in paragraph 92 of the report or reject it; in either case the judgement could be appealed to a criminal court of the second instance, which had 10 working days to reach a final decision. A copy of a recent judgement was being made available; it would interest the Committee particularly because of the view that both the right to express opinions and the right to reply were inherent human rights, neither having precedence over the other.

(Mr. Jauregui, Uruguay)

15. As concerned section IV (f) of the list of issues, no legislation other than that referred to in paragraph 103 of the report had been enacted, but the right to strike, recognized in article 57 of the Constitution, was legally in force as a result of Uruguay's ratification of the International Labour Organisation Conventions in question.

16. As to the implementation of article 27 of the Covenant addressed in section IV (g) of the list of issues, he had to say in all honesty that no ethnic minorities in Uruguay were denied any of their rights, given the guarantees in articles 8 and 5, 29 and 38 of the Constitution. People of all colours and races could rise to any station in society, and any difficulties of access or opportunity they might encounter did not reflect the natural Uruguayan way but arose along social rather than ethnic lines.

17. Regarding the representation of minorities in Parliament, under section IV (h) of the list, minority groups were fully integrated into the various political parties, which were the sole avenue to public office. The Senate, for instance, had 30 members, one of whom was a woman, while the Chamber of Deputies had 99 members, 6 of them women. He would provide the Committee with figures on the number of women who had run for elective office, but could assure it that women played a very dynamic role in Uruguayan politics. There had recently been proponents of setting legal minimum quotas for women serving in Government, but he himself had opposed such an approach as discriminatory against men and as an artificial solution.

18. Mr. SADI, commending the representative of Uruguay for his informative replies to earlier questions, asked how the legal separation of Church and State worked in practice, since the majority of Uruguayans were Roman Catholics. He wondered whether non-Roman Catholics stood much chance of being elected to public office or appointed to Judiciary or the Cabinet. On the question of press freedom, he would like to know whether there were any government-controlled newspapers or television channels; and also what limitations could be placed on the journalists' right to professional secrecy.

19. He found it surprising that the representative of Uruguay had discussed the situation of women in relation to minority groups. On that general question, it would be interesting to know if the Government sought to promote multiculturalism or the melting-pot approach, which was often more successful in practice.

20. Mrs. HIGGINS agreed that women were not ordinarily considered a minority, which under article 27 of the Covenant meant an ethnic, religious or linguistic minority. On that question, she would have liked to know, for instance, whether any non-Catholics had, through the party route as indicated, become members of Parliament and whether there were any problems impeding ethnic or racial groups from continuing to enjoy their own culture and language. She hoped that future reports would include a section on article 27 of the Covenant.

21. She observed that the Penal Code provisions governing offences by the media and the press (para. 94 of the report) sat rather uncomfortably in a liberal democracy and used terminology reminiscent of the old Eastern European countries

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("abuse of the Nation", "harm to the economic interest of the State"). The Uruguayan Government should consider changing the old law inherited from the de facto regime, and remove such qualifications of press freedom, which were not compatible with article 19 of the Covenant. Similarly, it was surprising that slander should carry a custodial sentence (para. 95) since it was normally an offence punishable by fine or reparations.

22. Mr. AGUILAR asked whether a journalist had to be a member of a professional association in order to enjoy the right to professional secrecy (para. 88 of the report). He would also like to know why the name of the printing press of a publication needed to be registered. He supported Mrs. Higgins' comments regarding paragraph 94 and the limitations on press freedom. Lastly, he would like clarification as to whether the failure to vote was a punishable offence and, if so, how that accorded with freedom of conscience.

23. Mr. WENNERGREN asked for information on the extent to which the Press Act permitted investigative journalism - in government archives, for instance - in the name of the right to seek information, which was one of the rights guaranteed under article 19, paragraph 2 of the Covenant.

24. Mr. NDIAYE, noting that the representative of Uruguay's interpretation of the term "minorities" was different from that given in article 27. He wondered whether there were any real minorities in Uruguay and, if so, whether they were free to practise their own religions and speak their language. He would also like more information on the proposed affirmative action legislation for minorities to which the Uruguayan representative said that he himself objected.

25. Mr. PRADO VALLEJO asked for clarification of the provisions of the Press Act cited in paragraph 94 of the report, since criticism of one's Government was a very common phenomenon. Also, the Penal Code provision punishing those who preached disobedience of the law could be a violation of freedom of expression in the case of those who argued against an unjust or unconstitutional law.

26. Miss EVATT, observing that the third periodic report said nothing about article 13 of the Covenant, said that she would like an account of Uruguayan law and policy on persons claiming refugee status on the grounds of fear of persecution. With regard to article 19 of the Covenant, she wondered if it was an offence to publish without registering as required (para. 89 of the report), and what penalty that carried.

27. She asked whether the Bill of Rights for Trade Unions referred to in the second periodic report had been adopted yet. Under article 27 of the Covenant, it would be useful to know whether there were any indigenous people in Uruguay and what their status was.

28. Mr. JAUREGUI (Uruguay) said that there was complete separation of Church and State, and religion or ethnicity had no bearing on accession to Parliament, except to the extent that they might be a condition of membership in a political party. There was no government-controlled press, and only one Government television channel, which carried cultural programming. All ethnic groups had the right to the full enjoyment of their own culture and language. Any church

or other religious group had complete freedom to function without the slightest interference, as long as it did not attack the foundations of society.

29. Several members had expressed concern regarding possible limitations on journalists' right to professional secrecy. Disclosure of sources by journalists was optional. If a newspaper editor was called to testify in a court case regarding slander, for example, and the right to professional secrecy was invoked, the door was closed to further inquiry about sources. No limitations were imposed on entry into the profession, and journalists were not required to be members of any professional organization. The obligations to the Ministry of Education and Culture mentioned in paragraph 89 simply involved administrative procedures allowing the determination of responsibility. The printers of publications were required to register solely as a precautionary measure. Since no prior restrictions had been placed on freedom of the press, legal action to halt the publication of material found to be in violation of the law would be impossible without the ability to identify the printer. The Act in no way limited the right to criticize the Government.

30. Mr. Aguilar had felt that there could be conflict between the constitutional obligation to vote in elections and the Covenant. There was no obligation to vote for a particular candidate, however, and a blank ballot could be returned if desired. The Government held the philosophy that all citizens had the duty to participate in the Government and its institutions. The only punishment for failure to comply was a small fine.

31. In response to Mr. Wennergren, the right to seek information went hand in hand with the right to disseminate it, and both were considered an integral part of freedom of information. To clarify the concept of compensatory discrimination, actions which were objectively discriminatory would not be prohibited if their intent was to redress a previous inequality. For example, the targeted recruitment of women to increase their numbers in certain fields was objectively discriminatory, but since it compensated for previous discrimination, it was not treated as such.

32. In answer to Miss Evatt, an unregistered newspaper could not publish, since that would violate article 4 of the Act. The new labour law mentioned during submission of the second periodic report had not yet been drafted. No indigenous people or racial minorities were found in Uruguay; its population was entirely composed of the descendants of immigrants.

33. Mr. PRADO VALLEJO said that the present situation with regard to human rights and the rule of law in Uruguay was commendable. His only concern was the Statutory Limitations Act, which represented a step backwards from the human rights standpoint; it was unacceptable for a State to renounce its duty to investigate reports of human rights violations. By prohibiting the investigation of abuses the Act impeded the exercise by the individual of his right to effective recourse, one of the most basic human rights. Payment of compensation by the civilian Government to the victims of the military dictatorship was a positive step, however.

34. Miss CHANET said that she understood the difficulty, after only a few years of civilian Government, of ridding the country of all the political debris from the dictatorship, and she hoped that the delegation would take the Committee's comments as an encouragement on that path.

35. The Statutory Limitations Act reflected the sovereign will of the Uruguayan people, which must be respected, but it had both direct and indirect negative effects leading to violations of the Covenant. Because of the failure to investigate, victims of abuse faced a virtual obstacle course in their attempts to seek effective recourse. Since no information on available recourse had been provided, she was forced to assume that none existed. If that was so, the obligations under article 2 of the Covenant were not being fully observed. Compared to the scale of the abuse which had taken place under the former Government, the number of cases of reparations - 34 - was very small.

36. While torture was not systematically practised, there were many reports of maltreatment in police stations. Moreover, the length of the pre-trial detention period was not in conformity with article 9. In current practice, it appeared that detention was the rule and freedom the exception, in direct opposition to the provisions of the Covenant, including the presumption of innocence in article 14.

37. In order to break completely with the past, she recommended the punishment of current cases of torture and the monitoring of police and all others with authority over individuals. Establishment of an independent and impartial authority to hear complaints would represent progress. The firearms law must be amended to conform with Basic Principles on the Use of Force and Firearms by Law Enforcement Officials allowing their use only in cases of self-defence. The laws regulating freedom of expression were worded in such a general way as to allow prosecution of persons criticizing the Government. One solution would be to draft specific legislation prohibiting incitement to class or racial hatred. Stricter legislation in that specific area would help to prevent possible abuses.

38. Mr. FODOR suggested that any questions raised by the Committee which had not been answered during the dialogue with the delegation could be answered in the next periodic report. While appreciating the right of a sovereign State to pass such legislation as the Statutory Limitations Act which had been approved by a national referendum - in the interests of national reconciliation, he could not see how it could be reconciled with the right of victims to compensation and recourse. He welcomed the news that some victims had received compensation, but stressed that all victims of abuse deserved to be compensated.

39. In the next report, he would like to learn more about the de facto barriers of women and Blacks in politics and employment. The abuse of detainees by the police should be investigated more rapidly and the perpetrators tried and convicted. Prison conditions must be improved, and the lack of recreational facilities and training programmes should be remedied. He hoped that the next report would mention progress made with regard to special measures to promote the rights of minorities.

40. Mr. WENNERGREN said that he had not contributed to the discussion on the Statutory Limitations Act because the opinions he had expressed on that issue

during the Committee's consideration of Uruguay's second periodic report remained valid.

41. In addition, he still had concerns regarding the interpretation in Uruguay of habeas corpus and amparo. Other members had drawn attention to inconsistencies between the rules governing detention and the provisions of article 9 of the Covenant; the delegation's comments on habeas corpus and amparo had been confusing and it remained unclear what kind of remedies they provided. He suggested that, when the detention system in Uruguay was revised, efforts should be made to streamline the procedures of habeas corpus and amparo, thereby making it easier for the population to understand and apply the remedies thus provided.

42. While assurances had been given of guarantees for the freedom of information and expression, it was also important to safeguard the freedom to seek information, in accordance with the provisions of article 19, he was not convinced that that aspect was adequately protected by the 1989 Act.

43. Mr. EL-SHAFEI said that while great progress had been made in Uruguay towards the restoration of democracy and respect for human rights, he shared the concerns expressed however by the other members of the Committee concerning the Statutory Limitations Act, which deprived victims of torture and other violations of their rightful remedies and was incompatible with article 2 of the Covenant. The number of cases which had come before the courts was small compared to the total number of cases and he hoped that the Committee's concerns would be conveyed to the Government of Uruguay.

44. With reference to derogation from obligations under the Covenant, he felt that the explanations offered by the delegation concerning existing guarantees of the provisions of article 4 of the Covenant were not convincing. Finally, he hoped that the authorities would heed the Committee's final decisions and views on communications.

45. Mrs. HIGGINS said that she had been greatly encouraged by the dialogue and by the high-level representation provided by the Government. In addition, Uruguay was to be complimented on being up-to-date with its reports, on having accepted the International Fact-Finding Commission and having acceded to the Optional Protocol. The delegation's answers on the question of national minorities had fully met her concerns in that area.

46. With regard to the troublesome issue of the Statutory Limitations Act, she accepted that the legislation in question was not a self-serving amnesty, like those adopted in many other countries, but an expression of the sovereign will of the people. Nevertheless, the human rights safeguards of the Covenant could not be set aside under any circumstances and the concerns of the minority constituted by victims of violations must be attended to. She was not convinced that the existing arrangements for providing information to the families of victims, securing appropriate remedies and ensuring that there would be no repetition of such violations were adequate.

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47. She was concerned by the delegation's reply, relating to the question of follow-up, that compensation could not be granted on an automatic basis but must be applied for. As a result, an author was forced once again to enter into contentious proceedings in order to establish an entitlement which should be granted automatically. Finally she was concerned that, because the Government had returned to de facto law, it had presumed that all was well and no further action was required. In some areas, however, the legislation which had preceded de facto law had been inconsistent with the Covenant, particularly the provisions of articles 4 and 19. The manner in which legislation on bail and detention was formulated militated against the presumption of innocence established by the Covenant. She suggested, consequently, that in its subsequent report the Government should answer carefully, paying closest attention to those areas which had caused particular concern to the Committee; should check all its laws against the provisions of the Covenant, using its dialogue with the Committee as a guide; and should conduct a review of the handling of remedies, in relation to the case law of the country.

48. Mr. SADI, congratulated Uruguay on having entered a new era of democracy and respect for human rights, and said that the only issue tarnishing its good image in that area was the adoption of the Statutory Limitations Act. Since it appeared unlikely that the Act would be repealed, efforts should be made to amend it so as to contain its negative implications and increase the effectiveness of its remedies, not only in the area of restitution and compensation but also by limiting the civil rights of the perpetrators; that would necessitate the conduct of investigations.

49. Mr. POCAR said that it was clear that there had been considerable progress in the area of human rights protection in Uruguay over recent years. Certain doubts persisted, however, in particular with regard to the effect of the Statutory Limitations Act on the exercise of human rights. He wondered what criteria were followed by the Executive Power in determining the political grounds of actions considered under the Act and how many of the 34 cases that had been considered were covered by the provisions of the Act. It was doubtful whether victims of violations covered by the Statutory Limitations Act would have recourse to effective remedies.

50. Mr. AGUILAR said that the dialogue with the delegation had been very productive, evidencing encouraging progress by the leadership of Uruguay in promoting national awareness of democracy and respect for human rights. He remained concerned, by certain issues, and noted, in particular, that the Statutory Limitations Act was not consistent with the provisions of article 2, paragraph 2 of the Covenant, as it removed the possibility of punishment for those guilty of abhorrent crimes and prevented victims from gaining true reparation, especially moral restitution. Some cases brought to the Committee's attention appeared to involve violation of the provisions of the Covenant and could hardly be covered by the Statutory Limitations Act since the violations in question could not have been committed by officials acting in the exercise of their duties or on orders from superiors. In general, the Act, both in its spirit and in its application, was contrary to the provisions of the Covenant and he urged the State party to take appropriate measures.

51. Noting that the coup d'état in Uruguay in 1973 had been effected in accordance with the provisions of the constitution in force at that time, he stressed the need to enact the necessary constitutional safeguards to prevent any repetition of such a massive violation.

52. In conclusion, he drew attention to certain inconsistencies in the provisions of the Constitution protecting freedom of the press and recommended that those provisions be brought more exactly in line with the Covenant.

53. The CHAIRMAN said that the Committee had been very pleased with the response from the Government of Uruguay and the positive developments in the area of human rights protection in that country.

54. With regard to the problems caused by the Statutory Limitations Act, he noted that, while it was impossible to eradicate the past, maximum efforts should be made to remedy past abuses and violations. Uruguay was making such efforts and he hoped that the Committee's comments would prove helpful. Sporadic instances of police abuse and maltreatment of detainees should be investigated, the perpetrators adequately punished and appropriate training provided for the police and armed forces. While it was clear that the legislation of Uruguay did not condone racial discrimination, the practice did exist and some sort of affirmative action might be required. By and large, the situation regarding the freedom of expression appeared to be satisfactory and the fact that the Committee had received many communications from Uruguay during the military dictatorship was evidence of broad awareness of the Covenant and its provisions in that country.

55. Mr. JAUREGUI (Uruguay) assured the Committee that those questions which he had been unable to answer would be taken up by the appropriate authorities. He described various measures undertaken in Uruguay to further the protection of human rights, in particular the establishment of a National Council on Human Rights, responsible for the study and dissemination of information on human rights. While Uruguay still had a considerable distance to go before it achieved full recognition of the dignity of human beings and respect for human rights, his Government would make every effort to implement and improve all domestic instruments aimed at full respect for human rights and looked forward to future cooperation with the Committee.

The meeting rose at 1 p.m.